IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2061 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

JADAVBHAI PURSHOTTAMBHAI PRAJAPATI - Respondent(s)

==========

Appearance :

MR ASHISH M DAGLI for Petitioner(s) : 1,
MR KISHOR M PAUL for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 23/08/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India , the petitioner Gujarat State Road Transport Corporation has challenged the legality and validity of the judgment and award

passed by the Labuor Court, Ahmedabad dated 20.7.2004 passed in Reference (LCA) No.1582 of 1991 in partly allowing the said reference directing the petitioner to reinstate the respondent with 35 % backwages and with continuity of service. It was the case of the respondent workman that he was serving as Off Day Reliever Watchman with the petitioner Corporation and worked for following days right from 1980 to 1990 as shown in the table below :

Sr.No.	Year	Working Days
1	1980	13
2	1981	122
3	1982	120
4	1983	94
5	1984	122
6	1985	103
7	1986	91
8	1987	93
9	1988	125
10	1989	165
11	1990	54

2. The respondent workman raised the industrial dispute challenging his termination as he was not offered the work from 1990 onwards and the same was

referred to the Labour Court, Ahmadabad for its adjudication being Reference No.1582 of 1991. It was contended on behalf of the respondent workman that as he had worked for more than 240 days in the aforesaid years, and that his services came to be terminated without following any procedure as required under Section-25-F of the Industrial Disputes Act and as he has worked continuously as per Section-25-B of the I.D.Act, it was requested to reinstate him in service. The said reference was opposed by the petitioner contending interalia that the respondent workman has never worked for more than 240 days in any of the year and he was working as Off Day Reliever Watchman and as and when regularly working Watchman was on leave, he was offered work and therefore, it is submitted that when the petitioner has not completed 240 days continuously in the last preceding year, more particularly, in any of the years, there is no question of breach of Section-25-F of the Industrial Disputes and therefore, it was requested to dismiss the reference. The Labour Court, Ahmedabad held that as the workman was working since 1980 and has worked for more than 240 days in all in

the aforesaid years, it is not required that the respondent should have worked for 240 days continuously in the last preceding year only, and therefore, there is breach of Section-25-F of the Industrial Disputes Act as the services of the workman was terminated without following any procedure as required under Section-25-F of the I.D.Act, more particularly, the respondent workman was not served with the notice, notice pay and / or retrenchment compensation and therefore, partly allowed the said reference directing the petitioner to reinstate the respondent workman with 35 % backwages and continuity of service. Being aggrieved and dissatisfied with the judgment and award passed by the Labour Court, Ahmedabad dated 20.7.2004 passed in Reference (LCA) No.1582 of 1991, the petitioner corporation has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

3. Shri A.M.Dagali, learned advocate appearing on behalf of the petitioner corporation has vehemently submitted that the Labour Court has not properly

appreciated the scope and ambit of Section – 25-F read with Section-25-B of the Industrial Disputes Act, 1947. He has further submitted that reasoning given by the Labour Court that for getting benefit of Section-25-F of the I.D.Act read with Section-25-B of the I.D.Act, the workman is not required to prove that he has worked for more than 240 days in the last preceding year but it is sufficient if it is proved that in all he has worked for more than 240 days. He has further submitted that in view of the fact that the respondent workman was serving as Off Day Reliever Watchman and as and when the work was available on non availability of regular watchman he was offered work and therefore, there is no question of following any procedure as required under Section-25-F of the Industrial Disputes Act, 1947, more particularly, when it is not proved and established that the respondent workman has worked for more than 240 days in the last preceding year of his alleged termination and therefore, it is requested to allow the present special civil application.

4. Shri K.M.Paul, learned advocate appearing on

behalf of the respondent workman while opposing the present special civil application has submitted that the Labour Court has rightly held that there is breach of Section-25-F of the I.D.Act as before terminating services of the respondent workman, no notice, no notice pay and retrenchment compensation was paid to the respondent workman and therefore, the same is not required to be interfered with by this Court in exercise of the powers under Articles 226 and 227 of the Constitution of India. He has further submitted that when the respondent workman was serving since 1980, it is to be presumed that the workman has continuously worked as contemplated under Section-25-B of the I.D.Act and therefore, it is not required to prove that the workman has worked of more than 240 days in the last preceding year and therefore, it is requested to dismiss the present special civil application.

5. Heard the learned advocates appearing on behalf of the parties.

6. It is not in dispute that the respondent workman

was serving as Off Day Reliever Watchman and was offered work as and when the work was available on the occasions of non availability of the regular watchman. It is also not in dispute that in none of the years the respondent workman has worked and attended more than 240 days. It is also not even the case of the respondent workman that he has worked for 240 days in the last preceding year from the ate of his alleged termination. Under the circumstances, when it is not established, proved and held that the respondent workman has not worked for more than 240 days in the last preceding year and more particularly, when the respondent workman was serving as Off Day Reliever Watchman, there is no question of following the procedure as required under Section-25-F of the I.D.Act. As held by the Hon'ble Supreme Court in case of MOHAN LAL VS. BHARAT ELECTRONICS LTD reported in 1981 (3) SCC 225 for getting benefit under Section-25-F of the I.D.Act, the workman must prove that he has worked for 240 days in the last preceding year from the date of his alleged termination. Following the aforesaid decision of the Hon'ble Supreme Court, the Division Bench of this

Court has also held that the workman for getting benefit under Section-25-F of the I.D.Act and the workman has to prove that he has worked for 240 days in the last preceding year of his termination. Under the circumstances and considering the aforesaid facts and circumstances and the judgment of the Hon'ble Supreme Court as well as the Division Bench of this Court, finding given by the Labour Court that there is breach of Section-25-F of the I.D.Act is vitiated and cannot be sustained. In view of the fact that the respondent workman has not worked for 240 days in the last preceding year of his alleged termination and in fact, in none of the years, the respondent workman has worked for more than 240 days, the petitioner was not required to follow the procedure as required under Section-25-F of the I.D.Act and therefore, there is no breach of Section-25-F of the I.D.Act appears to have committed by the petitioner corporation.

7. For the reasons stated hereinabove, the petition succeeds. The impugned judgment and award passed by the Labour Court, Ahmedabad dated 20th July, 2004

passed in Reference (LCA) No.1582 of 1991 is hereby quashed and set aside.

8. Rule is made absolute to the aforesaid extent, however, there will no order as to costs.

[M.R.Shah, J.]

=kailash=